

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

CITY OF HARRIMAN, TENNESSEE, and)	
ARLENE CARR (Intervening Plaintiff),)	
)	
Plaintiffs,)	
)	
v.)	No. 3:22-CV-77-KAC-DCP
)	
TOMMY HESTER d/b/a THE CLANCEY)	
GROUP and MARTIN L. GILLIAM,)	
)	
Defendants.)	

TOMMY HESTER d/b/a THE CLANCEY)
GROUP and MARTIN L. GILLIAM,)
)
Counter-Plaintiffs,)
)
v.)
)
CITY OF HARRIMAN, TENNESSEE,)
)
Counter-Defendants.)

TOMMY HESTER d/b/a THE CLANCEY)
GROUP and MARTIN L. GILLIAM,)
)
Third-Party Plaintiffs,)
)
v.)
)
SKYLINE INVESTMENTS 5 LLC, <i>et al.</i>)
)
Third-Party Defendants.)

ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION

This civil case is before the Court on United States Magistrate Judge Debra C. Poplin's "Report and Recommendation" ("Report") entered on April 25, 2023 [Doc. 72]. On February 15, 2023, Defendants/Counter-Plaintiffs/Third-Party Plaintiffs Tommy Hester d/b/a The Clancey

Group and Martin L. Gilliam (collectively, “Third-Party Plaintiffs”) filed a “Motion for Leave to Amend and to Join Correct Party” [Doc. 66], seeking leave to amend their “Verified Counter-Complaint and Third-Party Complaint” filed on January 11, 2022 in Roane County, Tennessee Chancery Court [*See* Doc. 1-2 at 49-68].¹ But Third-Party Plaintiffs did not attach a copy of their proposed amended pleading to their Motion, as required by this Court’s Local Rules. *See* E.D. Tenn. L.R. 15.1 (“[a] party who moves to amend a pleading shall attach a copy of the proposed amended pleading to the motion”).

Under Federal Rules of Civil Procedure 15 and 21, Third-Party Plaintiffs seek to “dismiss[]” Third-Party Defendant Skyline Investments 5, LLC and “join[]” Skyline Retail Investments 5, LLC “as the correct third-party defendant” through an amended pleading [*See* Doc. 66 at 2]. Third-Party Plaintiffs served the registered agent for Skyline Investments 5, LLC on or about January 19, 2022 [*See* Doc. 67 at 2-3]. But Third-Party Plaintiffs only “recently learned” “after re-reviewing ownership information” that (1) an entity named Skyline Investments 5, LLC “does not exist” and (2) Skyline Retail Investments 5, LLC owns the property at issue in this case [*See id.*]. And Third-Party Plaintiffs assert that Skyline Retail Investments 5, LLC “is a necessary party” because its actions or inactions may render it liable to Third-Party Plaintiffs [*Id.* at 3]. No Party responded to Third-Party Plaintiffs’ Motion. *See* E.D. Tenn. L.R. 7.2 (noting that the Court may deem “[f]ailure to respond to a motion” as “a waiver of any opposition to the relief sought”). Judge Poplin recommended that the Court grant Third-Party Plaintiffs’ Motion even though Third-Party Plaintiffs violated this Court’s Local Rules [*See* Doc. 72 at 3-4, 4 n.3]. No Party has objected to the Report, and the time to do so has passed [*See id.* at 4 n.2 (providing

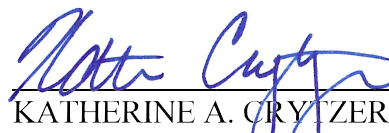
¹ On March 2, 2022, Third-Party Defendant United States Postal Service removed this action under 28 U.S.C. § 1442(a)(1) [*See* Doc. 1].

fourteen (14) days to file any objections to the Report)]. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

As Judge Poplin analyzed in the Report [*see generally* Doc. 72], Third-Party Plaintiffs' request to amend their pleading is well-taken and "on just terms." *See* Fed. R. Civ. P. 21. "[J]ustice so requires" an amendment because Third-Party Plaintiffs recently discovered the identity of the entity against whom they originally sought to bring a claim. *See* Fed. R. Civ. P. 15(a)(2). Although the Motion is somewhat delayed, Third-Party Plaintiffs' request to amend does not appear to arise from any "undue delay, bad faith or dilatory motive." *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Nor on this record would an amendment cause "undue prejudice" [*See* Docs. 67 at 1; 67-1 at 1]. *See Foman*, 371 U.S. at 182.

Accordingly, having reviewed the record, the Court **ACCEPTS** and **ADOPTS** Judge Poplin's Report [Doc. 72] under 28 U.S.C. § 636(b)(1) and Rule 72(b)(2), **GRANTS** Third-Party Plaintiff's "Motion for Leave to Amend and to Join Correct Party" [Doc. 66], and **DISMISSES** Third-Party Defendant Skyline Investments 5, LLC from this action. *See* Fed. R. Civ. P. 15(a)(2), 21. The Court **ORDERS** Third-Party Plaintiffs to file an amended "Verified Counter-Complaint and Third-Party Complaint" within **seven (7) days** of the entry of this Order. **Consistent with Third-Party Plaintiffs' representations in their Motion, the only amendment permitted to the "Verified Counter-Complaint and Third Party Complaint" is the substitution of Skyline Retail Investments 5, LLC for Skyline Investments 5, LLC.** The Court will strike any amended pleading by Third-Party Plaintiffs that fails to comply with this Order. *See* Fed. R. Civ. P. 12(f).

IT IS SO ORDERED.


KATHERINE A. CRYTZER
United States District Judge